



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
South Coast Region  
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San Diego, CA 92123  
[wildlife.ca.gov](http://wildlife.ca.gov)

*GAVIN NEWSOM, Governor*  
*CHARLTON H. BONHAM, Director*



April 14, 2025

Christina Bustamante  
City of Encinitas  
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Encinitas, CA 92024  
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**SUBJECT: MITIGATED NEGATIVE DECLARATION FOR THE SANTA FE  
SUBDIVISION PROJECT, SCH NO. 2025030425, SAN DIEGO COUNTY, CA**

Dear Christina Bustamante:

The California Department of Fish and Wildlife (CDFW) reviewed the Mitigated Negative Declaration (MND) from the City of Encinitas (City) for the Santa Fe Subdivision project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines<sup>1</sup>.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**CDFW ROLE**

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Fish & G. Code, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law<sup>2</sup> of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) or the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

CDFW also oversees the Natural Community Conservation Planning (NCCP) program. The City had prepared a draft Subarea Plan under the Subregional Multiple Habitat Conservation Program (MHCP), which addressed regional conservation planning across seven incorporated jurisdictions in northern San Diego County. Unfortunately, the Encinitas Subarea Plan was not finalized, and state and federal permits have not been issued to the City. To date, only the City of Carlsbad has received state and federal permits pursuant to the MHCP; however, the conservation principals remain relevant for development projects occurring in the other jurisdictions, and the draft Encinitas Subarea Plan provides an excellent measure for assessing the significance of potential impacts under CEQA.

## PROJECT DESCRIPTION SUMMARY

**Proponent:** The Swell Fund (Project Proponent)

**Objective:** The objective of the Project is to construct a 51-unit residential subdivision. Primary Project activities include demolition of three existing buildings; grading; vegetation removal; construction of homes, parking spaces, lighting, fencing, and retaining walls; infrastructure improvements; removal of 64 trees; landscaping with new trees; and approval of a Density Bonus Tentative Map, a Use Permit for a Planned Development, and a Coastal Development Permit.

**Location:** The 5.2-acre Project site is located in the City of Encinitas, east of Interstate 5, south of Santa Fe Drive, and west of El Camino real. The Project site is bounded by a school and road to the north, a tennis club to the east, and residential properties to the south and west.

**Biological Setting:** The Biological Survey (Rincon 2025) indicates that Project site includes 1.50 acres of non-native grassland and 3.70 acres of developed land. Crotch's bumble bee (*Bombus crotchii*; CESA-candidate endangered) is identified in the Biological Survey as having a low potential to occur. The 78 ornamental trees on the Project site may provide suitable nesting habitat for avian species.

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<sup>2</sup> "Take" is defined in Section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

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## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

### COMMENT # 1: Crotch's Bumble Bee

**Issue:** The Project may adversely impact Crotch's bumble bee.

**Specific impact:** The Project may result in permanent loss of suitable nesting and foraging habitat of Crotch's bumble bee. Impacts from ground disturbing activities may include death or injury of adults, eggs, and larva, as well as cause burrow collapse, nest abandonment, and reduced nest success. The measure in the MND proposed to mitigate these impacts are not sufficient.

**Why impact would occur:** The Biological Survey (Rincon 2025) states that Crotch's bumble bee has a low potential to occur on the Project site, due to limited native habitat or proximity to open space, with only scattered horticultural flowers present. As a result, the MND incorporates a Condition of Approval 1 (COA-1) to avoid impacts to Crotch's bumble bee. COA-1 states that habitat removal will occur outside of the Colony Active Period, if feasible. If habitat removal will occur during the Colony Active Period, a pre-construction survey will be conducted by a Qualified Biologist, meeting standards outlined in CDFW guidance. If Crotch's bumble bee individuals are observed on site, the Qualified Biologist will coordinate with CDFW to determine if Project activities would result in take, and if an Incidental Take Permit may be required, prior to issuance of any permits.

CDFW disagrees that this measure mitigates impacts to this species to below significant. According to CDFW's [Crotch's Bumble Bee Range – CDFW \[ds3095\]](https://data.ca.gov/dataset/crotchs-bumble-bee-range-cdfw-ds3095)<sup>3</sup> dataset, the Project area lies within the current home range for Crotch's bumble bee (CDFW 2024b). Though foraging resources may be limited to horticultural flowers and resources on neighboring sites, the Project site includes 1.50 acres of non-native grassland, which may provide suitable nesting habitat. Given the nesting ecology of Crotch's bumble bee, avoidance of incidental take is particularly complex if the species is present, as nests are difficult to identify. Crotch's bumble bee primarily nest in abandoned small mammal burrows, but may also nest under perennial bunch grasses, thatched annual grasses, brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2018). Overwintering sites utilized by Crotch's bumble bee mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Ground-disturbing activities conducted during the overwintering period may inadvertently result in direct mortality of individuals through crushing or destruction of burrows, which would result in unpermitted take under CESA.

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<sup>3</sup> <https://data.ca.gov/dataset/crotchs-bumble-bee-range-cdfw-ds3095>

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Absent surveys to determine species presence, avoidance of incidental take may potentially be very costly for the Project applicant and the City. If Crotch's bumble bee is detected during the preconstruction survey, the Project proponent would need to coordinate with CDFW to discuss next steps. Additional surveys may be required before take authorization is provided, inevitably delaying the Project months or years. Therefore, CDFW strongly encourages that the Project proponent conduct protocol-level surveys for Crotch's bumble bee within the year prior to the start of the Project, using the most recent survey guidance, to determine species presence or absence. If Crotch's bumble bee is not detected, ground disturbance can commence without further CDFW coordination; though, we recommend that a Biological Monitor remain on site during vegetation removal to confirm that no foraging individuals are impacted. This approach reduces both the risk of unpermitted take and the potential for extended Project delays.

**Evidence impact may be significant:** The California Fish and Game Commission accepted a petition to list the Crotch's bumble bee as endangered under CESA, determining that the listing "may be warranted" and advancing the species to the candidacy stage of the CESA-listing process. Pursuant to Fish and Game Code section 2085, CESA candidate species enjoy the same protections as CESA-listed threatened and endangered species. Therefore, take of Crotch's bumble bee is prohibited, except as authorized by State law through the issuance of an ITP or other authorization (Fish & G. Code, §§ 2080, 2085). Crotch's bumble bee has a State ranking of S1/S2. This means that the Crotch's bumble bee is considered critically imperiled or imperiled and is extremely rare (often 5 or fewer populations). Crotch's bumble bee is also listed as an invertebrate of conservation priority under the [California Terrestrial and Vernal Pool Invertebrates of Conservation Priority](#)<sup>4</sup> (CDFW 2017). Accordingly, Crotch's bumble bee meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Therefore, take of Crotch's bumble bee could require a mandatory finding of significance by the City (CEQA Guidelines, § 1565).

### **Recommended Potentially Feasible Mitigation Measure(s)**

CDFW recommends that the City amend COA-1 with the below changes and incorporate into the MND as an enforceable mitigation measure. Changes are denoted in ~~strikethrough~~ and **bold**:

#### **Mitigation Measure #1: Crotch's Bumble Bee.**

To avoid impacts to Crotch's bumble bee (*Bombus crotchii*), **prior to vegetation removal or issuance of a grading permit**, ~~habitat removal in the proposed area of disturbance must occur outside of the Colony Active Period between April 1 and August 31. If removal of habitat in the proposed area of disturbance must occur during the Colony Active Period,~~ a Qualified Biologist shall conduct **focused Crotch's bumble bee** ~~a pre-construction~~ surveys to determine the presence or absence of Crotch's bumble bee within the proposed area of disturbance. Surveys

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<sup>4</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157415&inline>

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must be conducted by a Qualified Biologist meeting the qualifications discussed in the California Department of Fish and Wildlife (CDFW) guidance (i.e., Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species, dated June 6, 2023) with a Memorandum of Understanding for Crotch's bumble bee surveys. The Qualified Biologist shall send all photographic vouchers to a CDFW approved taxonomist to confirm the identifications of the bumble bees encountered during surveys.

The pre-construction survey shall be conducted during the Colony Active Period between April 1 and August 31 by the Qualified biologist prior to the issuance of Grading Permit, Demolition Plans/Permits and Building Plans/Permits and within one year prior to the initiation of project activities (including removal of vegetation). The pre-construction survey shall consist of photographic surveys following CDFW guidance (i.e., Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species, dated June 6, 2023). The surveys shall consist of three separate visits spaced two to four weeks apart. Survey results will be considered valid until the start of the next Colony Active Period. The Qualified Biologist/owner permittee shall submit the results (including positive or negative survey results) of the pre-construction survey to the City. Survey data shall be submitted by the Qualified Biologist to the California Natural Diversity Database in accordance with the Memorandum of Understanding with CDFW, or Scientific Collecting Permit requirements, as applicable.

If pre-construction surveys identify Crotch's bumble bee individuals on-site, the Qualified Biologist shall notify and consult with CDFW to determine whether project activities would result in impacts to Crotch's bumble bee, in which case, an Incidental Take Permit may be required. If an Incidental Take Permit is required, it shall be obtained prior to issuance of Grading Permit, Demolition Plans/Permits and Building Plans/Permits, and all necessary permit conditions shall be fulfilled prior to initiation of project activities. Take of any endangered, threatened, or candidate species that results from the project is prohibited, except as authorized by state law (California Fish and Game Code §§ 86, 2062, 2067, 2068, 2080, 2085; California Code of Regulations, Title 14, Section 786.9) under the California Endangered Species Act.

**Recommendation #1: Crotch's Bumble Bee.** Given that the Project is within the known range for the species, we recommend that a Biological Monitor remain on site during vegetation removal to confirm that no foraging individuals are impacted.

**Mitigation and Monitoring Reporting Plan.** CDFW recommends the Project's environmental document include mitigation measures recommended in this letter. CDFW has provided comments via a mitigation monitoring and reporting plan to assist in the development of feasible, specific, detailed (i.e., responsible party, timing, specific actions, location), and fully enforceable mitigation measures (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). The Lead Agency is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public

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Resources Code section 21081.6(a)(1), CDFW has provided a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation Monitoring and Reporting Plan (Attachment A).

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The [CNDDDB website](https://wildlife.ca.gov/Data/CNDDDB)<sup>5</sup> provides direction regarding the types of information that should be reported and allows on-line submittal of field survey forms.

In addition, information on special status native plant populations and sensitive natural communities, should be submitted to CDFW's Vegetation Classification and Mapping Program using the [Combined Rapid Assessment and Relevé Form](#)<sup>6</sup>.

The City should ensure data collected for the preparation of the MND is properly submitted.

## **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## **CONCLUSION**

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts on biological resources. CDFW requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of any forthcoming hearing date(s) for the Project (CEQA Guidelines, § 15073(e)).

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<sup>5</sup> <https://wildlife.ca.gov/Data/CNDDDB>

<sup>6</sup> <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit>

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Questions regarding this letter or further coordination should be directed to Jessie Lane<sup>7</sup>, Environmental Scientist.

Sincerely,

DocuSigned by:  
  
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Victoria Tang  
Environmental Program Manager  
South Coast Region

## ATTACHMENTS

Attachment A: Draft Mitigation, Monitoring, and Reporting Program

cc: California Department of Fish and Wildlife  
Victoria Tang  
Jennifer Turner  
Steve Gibson  
Meredith Osborne  
Jessie Lane

Office of Planning and Research  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

## REFERENCES

[CDFW] California Department of Fish and Wildlife. 2017. California Terrestrial and Vernal Pool Invertebrates of Conservation Priority. Available at:  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=149499&inline>

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Hatfield, R., Jepsen, S., Foltz Jordan, S., Blackburn, M., Code, Aimee. 2018. A Petition to the State of California Fish and Game Commission to List Four Species of Bumblebees as Endangered Species

Williams, P. H., R. W. Thorp, L. L. Richardson, and S.R. Colla. 2014. Bumble bees of North America: An Identification guide. Princeton University Press, Princeton, New Jersey. 208pp

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<sup>7</sup> Phone: 858-354-4105; Email: [jessie.lane@wildlife.ca.gov](mailto:jessie.lane@wildlife.ca.gov)

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**ATTACHMENT A: DRAFT MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

CDFW provides the following language to be incorporated into the MMRP for the Project.

Mitigation Measure	Timing	Responsible Party
<p><b>Mitigation Measure #1: Crotch’s Bumble Bee.</b> CDFW recommends that the City amend COA-1 with the below changes and incorporate into the MND as an enforceable mitigation measure. Changes are denoted in <del>strike through</del> and <b>bold</b>:</p> <p><b>Mitigation Measure #1: Crotch’s Bumble Bee.</b></p> <p>To avoid impacts to Crotch’s bumble bee (<i>Bombus crotchii</i>), <b>prior to vegetation removal or issuance of a grading permit</b>, <del>habitat removal in the proposed area of disturbance must occur outside of the Colony Active Period between April 1 and August 31. If removal of habitat in the proposed area of disturbance must occur during the Colony Active Period,</del> a Qualified Biologist shall conduct <b>focused Crotch’s bumble bee</b> <del>a pre-construction</del> surveys to determine the presence or absence of Crotch’s bumble bee within the proposed area of disturbance. Surveys must be conducted by a Qualified Biologist meeting the qualifications discussed in the California Department of Fish and Wildlife (CDFW) guidance (i.e., Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species, dated June 6, 2023) with a Memorandum of Understanding for Crotch’s bumble bee surveys. The Qualified Biologist shall send all photographic vouchers to a CDFW approved taxonomist to confirm the identifications of the bumble bees encountered during surveys.</p> <p>The pre-construction survey shall be conducted during the Colony Active Period between April 1 and August 31 by the Qualified biologist prior to the issuance of Grading Permit, Demolition Plans/Permits and Building Plans/Permits and within one year prior to the initiation of project activities (including removal of vegetation).</p>	<p>Before Issuance of a Grading Permit or Vegetation Removal</p>	<p>City</p>



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<b>Mitigation Measure</b>	<b>Timing</b>	<b>Responsible Party</b>
<p>The pre-construction survey shall consist of photographic surveys following CDFW guidance (i.e., Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species, dated June 6, 2023). The surveys shall consist of three separate visits spaced two to four weeks apart. Survey results will be considered valid until the start of the next Colony Active Period. The Qualified Biologist/owner permittee shall submit the results (including positive or negative survey results) of the pre-construction survey to the City. Survey data shall be submitted by the Qualified Biologist to the California Natural Diversity Database in accordance with the Memorandum of Understanding with CDFW, or Scientific Collecting Permit requirements, as applicable.</p> <p>If pre-construction surveys identify Crotch’s bumble bee individuals on-site, the Qualified Biologist shall notify and consult with CDFW to determine whether project activities would result in impacts to Crotch’s bumble bee, in which case, an Incidental Take Permit may be required. If an Incidental Take Permit is required, it shall be obtained prior to issuance of Grading Permit, Demolition Plans/Permits and Building Plans/Permits, and all necessary permit conditions shall be fulfilled prior to initiation of project activities. Take of any endangered, threatened, or candidate species that results from the project is prohibited, except as authorized by state law (California Fish and Game Code §§ 86, 2062, 2067, 2068, 2080, 2085; California Code of Regulations, Title 14, Section 786.9) under the California Endangered Species Act.</p>		